



## NEPA Bald and Golden Eagle Guidance

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### Introduction

Pursuant to 23 United States Code 327 and the implementing Memorandum of Understanding (MOU) executed on XX, the Maine Department of Transportation (MaineDOT) has assumed, and the Federal Highway Administration (FHWA) has assigned its responsibilities under the National Environmental Policy Act (NEPA) for highway projects and Local Agency Program (LAP). MaineDOT’s assumption includes all highway projects in Maine with FHWA federal funding or other FHWA federal action. This assumption of FHWA responsibilities or NEPA Assignment includes responsibility for environmental review, interagency consultation, and approval of NEPA actions. MaineDOT will be the Lead Federal Agency for MaineDOT-sponsored highway projects.

The following provides guidance for the Bald and Golden Eagle Act and provides the process for identifying Bald and Golden Eagle locations to determine the appropriate level of agency coordination required for a proposed project.

The Bald and Golden Eagle Protection Act (16 USC 668a-d, Eagle Act) was enacted in 1940 prohibiting anyone without a permit from taking bald eagles and providing criminal penalties for persons from owning or transacting any eagle, parts, nest, or eggs; alive or dead. Transportation projects are subject to the implementing regulations at 50 CFR 22, prohibiting, except under certain specified conditions, from taking of such birds, including their parts, nests, or eggs. The U.S. Fish and Wildlife Service (USFWS) has regulatory authority over The Eagle Act. The Eagle Act defines “take” as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb” and defines “disturb” as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior”. This includes impacts resulting from human-induced alterations around a previously used nest site when eagles are not present. Bald eagles were listed in the Endangered Species Act (ESA) in 1978 and upgraded to Threatened status in 1995 due to recovery efforts. In 2007 the bald eagle was removed from the Federal Endangered Species List, and in 2009 from the Maine Endangered Species List. The Golden Eagle is listed as Endangered on Maine’s Endangered Species List and has not been listed on the Federal Endangered Species List. Golden eagles were last documented to breed in Maine in 1998.

The Maine Department of Inland Fisheries and Wildlife maintains a geographic database of current and past eagle nest locations but defers all regulatory coordination activities to the USFWS.

MaineDOT Biologists are responsible for assessing and ensuring compliance with this law under NEPA Assignment. Bald and Golden Eagle information is provided to and discussed with the Team Leader. This information is incorporated into the overall NEPA decision.

### 1.0 Bald and Golden Eagle Initial Project Question and Documentation

The following question is required to be answered by the MaineDOT Biologist:

1. Is the project located within 1,320 feet of a mapped Bald or Golden Eagle nest?

The MaineDOT Biologist will use the [Maine Department of Inland Fisheries and Wildlife’s](#) State Endangered Threatened and Special Concern Species Layer to answer this question.



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A Yes response to Question 1 requires further analysis of the nest location, project activity, and schedule. Work within 660 feet of a nest that cannot be completed outside the breeding season requires consultation with USFWS (go to 2.0).

A No response concludes the Bald and Golden Eagle assessment as the project is not within the range and/or suitable habitat for Bald or Golden Eagles and does not otherwise have the potential to take either species.

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

### 2.0 Bald and Golden Eagle Secondary Project Question

The following question is required to be answered by the MaineDOT Biologist:

2. Is the project located within 660 feet of a mapped Bald or Golden eagle nest?

A Yes response to Question 2 requires further analysis of the activity and will require seasonal restrictions on project activity (Go to 3.0). Any timing restriction will be written in a Special Provision for the project's environmental contract package. A No response to question 2 concludes the Bald and Golden Eagle assessment.

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

### 3.0 Bald and Golden Eagle Impacts Assessment, Agency Coordination, Review, and Approval Process

The following question is required to be answered by the MaineDOT Biologist:

3. Will the project involve a potential take on the Bald or Golden eagle?

A Yes response requires analysis of the nest for activity. Once it has been determined that the location of a proposed project is within the USFWS-regulated area of a mapped eagle nest and that the work must occur during the nesting period, and that the nest is actively used; the MaineDOT Biologist will coordinate with USFWS and the MaineDOT Team Leader to assess avoidance measures or alternatives to the project and potential permitting requirements. If, through coordination with USFWS, it is determined that the project could result in impacts to Bald or Golden Eagles, an incidental take permit must be acquired from USFWS prior to NEPA approval. The MaineDOT Biologist will complete and submit the permit application in coordination with USFWS.

All actions will be processed and documented in MaineDOT's ProjEx database and MaineDOT's Environmental CPD e-file.

### 4.0 Links

Bald and Golden Eagle Protection Act

<https://www.law.cornell.edu/uscode/text/16/668a>

Eagle Permits

<https://www.law.cornell.edu/cfr/text/50/part-22>